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September 4, 2020

VIA ECF

Hon. Zahid N. Quraishi, U.S.M.J.
Clarkson S. Fisher Federal Building
and U.S. Courthouse
402 E. State Street
Trenton, New Jersey 08608

Re: *UMG Recordings, Inc. et al. v. RCN Telecom Services, LLC et al.*
Civil Action No. 19-17272 (MAS) (ZNQ)

Dear Judge Quraishi:

This firm, along with our co-counsel Stein Mitchell Beato & Missner LLP, represents Plaintiffs in the referenced matter. Plaintiffs respectfully request that the Court require Defendants to abide by the Court's August 5, 2020 Letter Order (ECF No. 83), in which the Court overruled Defendants' objections and held that "Defendants must produce information and documents concerning copyright infringement notices and RCN's handling of copyright infringement from before 2016."

Defendant RCN has failed to comply with this clear ruling. It has provided neither a narrative answer nor documents from which information concerning its pre-June 2016 policies and procedures for handling copyright infringement can be obtained. *See* Ex. A, Aug. 14, 2020 RCN First Supplemental Responses to Plaintiffs' First Interrogatories (Interrogatory No. 4). Instead, after the Court issued its Letter Order, RCN provided the following scant "supplemental" answer:

Subject to its specific and general objections, RCN identifies the documents Bates labeled RCN0000001-0000013 pursuant to Rule 33(d) from which the answer to this Interrogatory may be determined. Additionally, RCN incorporates by reference its First Supplemental Response to Interrogatory No. 7.

Ex. A. at p. 4. This response plainly fails to comply with the Court's Letter Order. The documents that RCN identifies in its supplemental response, RCN0000001-0000013, do not provide responsive information for the pre-June 2016 time frame. To the contrary, they all are dated 2019 or 2020, and/or describe policies and procedures that, according to RCN's supplemental answer

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to Interrogatory No. 7, are from June 2016 to the present. And neither does RCN's supposedly incorporated supplemental answer to Interrogatory No. 7 provide pre-2016 information. That answer, which responded to a request to provide the basis for any DMCA safe harbor defense that RCN may assert, omits *any* discussion of pre-June 2016 conduct. *See id.* at 8. Plaintiffs have raised this ongoing deficiency in written correspondence with RCN's counsel, but RCN has indicated it stands on its supplemental answer, despite the clarity and controlling effect of this Court's ruling.¹

Thus, RCN has provided literally *no description or information* regarding its pre-2016 policies and procedures for copyright infringement, despite the Court's ruling that such information is discoverable. Plaintiffs respectfully ask that the Court require RCN to provide a detailed, responsive, narrative answer to Interrogatory No. 4, explaining its policies and procedures for handling copyright infringement during the January 2010-June 2016 time frame, without further delay. This request is particularly appropriate given the Court's recent ruling denying RCN's motion to dismiss in its entirety (ECF Nos. 88 and 89), which means that the case will proceed to resolution on the merits. Plaintiffs reserve all rights with respect to RCN's ongoing non-compliance with this Court's Letter Order.

Plaintiffs are available for a telephonic conference with the Court and Defendants at the Court's convenience. Thank you in advance for your consideration and attention to this matter.

Respectfully yours,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

s/ Thomas R. Curtin

THOMAS R. CURTIN

Attachment

cc: All counsel (via ECF and e-mail)

¹ On Friday, August 28, 2020, counsel for RCN wrote: "In response to Interrogatory No. 4, RCN has identified documents reflecting RCN's policies relating to allegations of copyright infringement in place prior to 2016. Additionally, RCN's Interrogatory Responses provide a written response relating to how RCN addresses allegations of copyright infringement against its subscribers. RCN's supplemental responses are complete."